IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 165 of 1985

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI
and
Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME TAX

Versus

RAMABEN CHINUBHAI TRUST

Appearance:
MR AKIL QURESHI WITH MR MANISH R BHATT for Petitioner
NOTICE SERVED for Respondent No. 1

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI
and
MR.JUSTICE M.S.SHAH

Date of decision: 07/11/2000

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In this reference, at the instance of the revenue, the following questions are referred for the assessment year 1980-81 :-

"1. Whether, the Tribunal has been right in law in holding that capital gain should be assessed in the hands of the assessee trust on a substantive basis and not in the hands of the beneficiary ?

2. Whether the Tribunal has been right in law in holding that the assessee was entitled to allowance of depreciation in the value of shares of Sayaji Mills Ltd. as claimed while computing capital gain arising out of sale of shares of Rajes Textile Mill ?"

2. At the hearing of the reference, Mr Qureshi, learned counsel for the revenue fairly states that question No. 1 is already covered by the decision of this Court in Pallavi S. Mayor vs. CIT, Gujarat, 127 ITR 701 and the decision was in favour of the assessee and against the revenue. In this view of the matter, we answer question No. 1 in the affirmative i.e. in favour of the assessee and against the revenue.

3. As far as question No. 2 is concerned, the learned counsel for the revenue states that this question is also covered by the decision dated 19.10.2000 of this Court in Income Tax Reference No. 161 of 1985 (CIT vs. Vimlaben Vadilal Family Trust). Accordingly, we answer question No. 2 also in the affirmative i.e. in favour of the assessee and against the revenue.

The reference stands disposed of accordingly with no order as to costs.

(D.M. Dharmadhikari, CJ)

(M.S. Shah, J.)

sundar/-